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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130528511-3935-02]

RIN 0648-BD31

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Commercial, Limited Entry Pacific Coast Groundfish Fishery; Program Improvement and Enhancement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action implements revisions to the Pacific coast groundfish trawl rationalization program (program), a catch share program, and includes clarifications of regulations that affect the limited entry trawl and limited entry fixed gear sectors managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action implements trailing actions for the program that are either original provisions of the program, such as quota share (QS) permit application and transfer regulations, or are provisions that increase flexibility or efficiency, or address minor revisions/clarifications.

DATES: Effective on January 1, 2014, except for the amendments to §660.140(e)(3)(iii)(B), which will be effective December 15, 2013.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. Copies of the FRFA and the Small

Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115-0070; or by phone at 206-526-6150. Copies of the Small Entity Compliance Guide are also available on the West Coast Region's website at <http://www.westcoast.fisheries.noaa.gov/index.html>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115-0070, and to OMB by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206-526-4491; (fax) 206-526-6736; Ariel.Jacobs@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented the trawl rationalization program for the Pacific coast groundfish fishery's trawl fleet (75 FR 78344; Dec. 15, 2010). The program was adopted in 2010 through Amendments 20 and 21 to the FMP and consists of an Individual Fishing Quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Since that time, the Pacific Fishery Management Council (Council) and NMFS have been addressing implementation issues as they arise, some of which are the subject of this final rule. This action includes the following, by category of (A) implementation of original program, (B) increasing flexibility or efficiency, and (C) minor revisions/clarifications:

(A) Implementation of Original Program

1. Establish quota share (QS) permit application and QS transfer regulations.
- (B) Increasing Flexibility or Efficiency
2. Clarify exceptions for lenders from control rules,
 3. Change the opt-out requirement for quota pound (QP) deficits,
 4. Eliminate double filing of co-op reports (November and March),
 5. Revise first receiver site license requirements (FRSL), including site inspection and expiration date, and
 6. Remove end of the year ban on QP transfers between vessel accounts.
- (C) Minor Revisions/Clarifications
7. Remove the term “permit holder” from groundfish regulations and replace with “vessel owner,” “permit owner,” or “owner of a vessel registered to a limited entry permit,” as applicable,
 8. Revise the process for a permit holder (vessel owner) to change their vessel ownership,
 9. Clarify that the processor obligation may be to more than one MS permit,
 10. Revise the mothership catcher vessel (MS/CV) endorsement restriction given severability,
 11. Clarify sorting requirement for full retention so “predominant species” means only one species,
 12. Clarify the accumulation limits calculation for compliance with the annual QP vessel limit in vessel accounts,
 13. Add a prohibition against failing to establish a new vessel account, following a change in vessel ownership, prior to fishing in the Shorebased IFQ program, and

14. Add a prohibition against landing fish from an IFQ trip to a first receiver without a valid FRSL.

Each of these items, along with additional background information, was described in detail in the proposed rule (78 FR 43125, July 19, 2013), and that information is not repeated here.

NMFS is currently involved in ongoing litigation regarding the initial allocation of whiting quota to the shoreside and mothership sectors of the trawl rationalization program. The outcome of this litigation may affect existing quota share allocation amounts, and could potentially affect or delay quota share trading, which is scheduled to begin January 1, 2014 under existing regulations (78 FR 18879).

Comments and Responses

NMFS solicited public comment on the second program improvement and enhancement rule (“PIE 2”) (78 FR 43125, July 19, 2013). The proposed rule also included a collection-of-information requirement subject to review and approval under the Paperwork Reduction Act (PRA). Public comment was also sought regarding potential impacts to the public due to this collection of information requirement. The comment period ended on August 19, 2013; no public comments were received on either the proposed rule or the collection of information requirement.

Changes from the Proposed Rule

No changes were made from the proposed rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP. The Amendment 20 and 21 EISs are available on the Council's website at <http://www.pcouncil.org/>. The regulatory changes in this rule were categorically excluded from the requirement to prepare a NEPA analysis.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The preamble to the proposed rule (78 FR 43125, July 19, 2013) included a detailed summary of the analyses contained in the IRFA. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of this rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see ADDRESSES) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows:

As described above, this action implements revisions to the Pacific Coast Groundfish Trawl Rationalization Program (program), a catch share program. This action implements trailing actions that either implement original provisions of the program, modify it to increase the industry's flexibility or efficiency, or make minor revisions/clarifications to the existing regulations. There were no significant issues raised by the public comments in response to the IRFA. No public comments were received on either the proposed rule or the collection of information requirement.

As discussed in the proposed rule, this rule affects the following sectors/programs: Shorebased Individual Fishing Quota (IFQ) Program—Trawl Fishery, Mothership Coop (MS) Program—Whiting At-sea Trawl Fishery, and Catcher-Processor (C/P) Coop Program—Whiting

At-sea Trawl Fishery. In 2012, these fleets generated about \$79 million in ex-vessel revenue: \$11 million by the MS sector, \$16 million by the CP sector, and \$52 million by the Shorebased IFQ Program. This rule also affects lenders that provide short-term inventory, credit, agricultural lending, and consumer cash lending secured by personal property (NAICS 522298--All Other Nondepository Credit Intermediation).

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. However, since publication of the proposed rule, a final rule was issued by the SBA that increased the size standard for Finfish Fishing from \$4.0 million to \$19 million (78 FR 37398). A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$19.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. Prior to SBA's recent changes to the size standards for commercial harvesters, a business involved in both the harvesting and processing of seafood products, also referred to as a catcher/processor (CP), was considered a small business if it met the \$4.0 million criterion for commercial fish harvesting operations. In light of the new size standards for commercial harvesters, NMFS is reviewing the size standard for CPs. However, for purposes of this rulemaking, NMFS is applying the \$19.0 million standard because whiting CPs are involved in the commercial harvest of finfish. For NAICS 522298 lenders, the size standard is \$7.0 million.

As part of the permit application processes for the non-tribal fisheries, applicants are asked if they considered themselves a “small” business and to provide detailed ownership information. Many companies participate in two or more of these sectors. All MS/CV participants are involved in the shorebased IFQ sector while two of the three CP companies also participate in both the shorebased IFQ sector and in the MS sector. Many companies own several QS accounts and vessel accounts. Taking into account cross participation, multiple accounts, and affiliation between entities, NMFS estimates that there are 145 fishery related entities directly affected by these proposed regulations, 102 of which are considered to be “small” businesses. Overall, NMFS estimates that there are approximately 730 affected entities, 695 of which are “small” businesses.

The change in the size standard for vessels that harvest finfish does not change NMFS’ conclusions about this rule. This rule is administrative in nature and will not have a significant, negative impact on small entities. Some of these changes were recommended by the industry to increase flexibility or efficiency. This rule is likely to have beneficial effects on small entities. Instituting provisions that allow fishermen to trade their quota shares should allow fishermen and the fishery to achieve the full benefits of the IFQ program as identified in (75 FR 78344; Dec. 15, 2010). Increasing the availability of loans to fishermen by providing non-traditional lenders increased opportunity to make additional loans should also be beneficial to small entities.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule,

and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be sent to all limited entry and quota share permit owners, vessel account holders, and first receiver site license holders for the fishery. The guide and this final rule will also be available on the West Coast Region’s website (see ADDRESSES) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0620. NMFS received no comments on the proposed rule regarding this information collection. Public reporting burden for the QS permit/account application form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the online QS transfer form is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the online QP transfer form (from a QS account to a vessel account, or vessel account to another vessel account) is estimated to average 8 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the trawl identification of ownership interest form for new entrants, including lenders, is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Public reporting burden for the first receiver site license application form for re-registering applicants is estimated to average 110 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the mothership cooperative permit application form is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the catcher/processor cooperative permit application form is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS, West Coast Region at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The regulations have no direct effect on the tribes.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: November 8, 2013

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

performing the functions and duties of the

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 660 is amended as follows:

PART 660--FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.11, remove the definition for “Permit holder”.

3. In § 660.12, revise paragraph (a)(8) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(8) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY applied; except as specified at § 660.130(d).

* * * * *

4. In § 660.25:

- a. Revise paragraphs (b)(3)(ii), (b)(3)(iv)(C)(~~4~~), (b)(3)(vii), and the heading of paragraph (b)(4);
- b. Add paragraph (b)(4)(i)(G); and
- c. Revise the heading of paragraph (b)(4)(iv), and paragraphs (b)(4)(iv)(A) through (C), (b)(4)(v)(B) and (D), (b)(4)(vi)(B), (b)(4)(vii) introductory text, (b)(4)(vii)(A) through (C), (b)(4)(viii), and (g)(1).

The revisions and addition read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(3) * * *

(ii) Gear endorsement. There are three types of gear endorsements: Trawl, longline, and pot (trap). When limited entry “A”-endorsed permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry “A”-endorsed permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry “A”-endorsed permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, fixed gear primary fishery for sablefish described at § 660.231, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. Vessels registered to limited entry permits may be used to fish with open access gear, subject to the crossover provisions at § 660.60 (h)(7)(ii), except that vessels registered to sablefish-endorsed permits fishing in the sablefish primary season described at § 660.231, may not fish with open access gear against those limits. An MS permit does not have a gear endorsement.

* * * * *

(iv) * * *

(C) * * *

(4) Any partnership or corporation with any ownership interest in a limited entry permit with a sablefish endorsement or in the vessel registered to the permit shall document the extent of that ownership interest with NMFS via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, vessel owner, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and

(v) of this section. NMFS will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, vessel owner, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if NMFS discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(2) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as “unidentified” until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(2) of this section. If NMFS discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(3) of this section, the partnership or corporation will be notified, NMFS will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in “unidentified” status with respect to vessel registration until the partnership or corporation is able to register ownership of those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

* * * * *

(vii) Endorsement and exemption restrictions. “A” endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, and C/P endorsements may not be registered to another permit owner (i.e. , change in permit ownership or ownership interest) or to another vessel (i.e. , change in vessel registration) separately from the limited entry permit. At-sea processing exemptions, specified at paragraph (b)(6) of this section, are associated with the

vessel and not with the limited entry permit and may not be registered to another permit owner or to another vessel without losing the exemption.

(4) Limited entry permit actions—renewal, combination, stacking, change of permit owner or vessel owner, and change in vessel registration.

(i) * * *

(G) At the time of renewal, NMFS will notify owners of limited entry permits and vessel owners if vessel ownership information for a vessel registered to the permit is not current. NMFS will not renew a limited entry permit registered to a vessel for which vessel ownership information is not current.

* * * * *

(iv) Changes in permit owner and/or vessel owner — (A) General. Change in permit owner and/or vessel owner applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(vii) and (viii) of this section. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit owner has been registered with and approved by NMFS. NMFS will not approve a change in permit owner for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. NMFS will not approve a change in permit owner for a limited entry permit with an MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), and § 660.150(f)(3), respectively. NMFS considers the following as a change in permit owner that would require registering with and approval by NMFS, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the

permit; or removing an individual or entity from the legal name on the permit. A change in vessel owner includes any changes to the name(s) of any or all vessel owners, as registered with USCG or a state. The new owner(s) of a vessel registered to a limited entry permit must report any change in vessel ownership to NMFS within 30 calendar days after such change has been registered with the USCG or a state licensing agency.

(B) Effective date. The change in permit ownership or change in the vessel holding the permit will be effective on the day the change is approved by NMFS, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (b)(4)(v) of this section.

(C) Sablefish-endorsed permits. If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new permit owner or vessel owner during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(v) * * *

(B) Application. Change in vessel registration applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(vii) and (viii) of this section. At a minimum, a permit owner seeking to change vessel registration of a limited entry permit shall submit to NMFS a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. NMFS will not approve a change in vessel registration until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

* * * * *

(D) Sablefish-endorsed permits. If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season

containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(vi) * * *

(B) Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements). Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements) may not be registered for use with a different vessel more than once per calendar year, except in cases of death of a vessel owner or if the vessel registered to the permit is totally lost as defined in § 660.11. The exception for death of a vessel owner applies for a vessel owned by a partnership or a corporation if the person or persons with at least 50 percent of the ownership interest in the entity dies.

* * * * *

(vii) Application and supplemental documentation. Permit owners may request a change in vessel registration and/or change in permit owner or vessel owner by submitting a complete application form. In addition, a permit owner applying for a change in vessel registration and/or change in permit owner of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. If a change in vessel owner occurs, the new vessel owner has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) For a request to change a vessel registration and/or change a permit owner or vessel owner, the permit owner must provide NMFS with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(B) For a request to change a vessel registration and/or change a permit owner or vessel owner for sablefish-endorsed permits with a tier assignment for which a corporation or partnership is listed as permit owner and/or vessel owner, an Identification of Ownership Interest Form must be completed and included with the application form.

(C) For a request to change a permit owner for an MS permit or for a request to change a vessel registration and/or change a permit owner or vessel owner for an MS/CV-endorsed limited entry trawl permit, an Identification of Ownership Interest Form must be completed and included with the application form.

* * * * *

(viii) Application forms available. Application forms for a change in vessel registration, permit owner, or vessel owner are available at: NMFS West Coast Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office, 7600 Sand Point Way, NE., Seattle, WA 98115; or http://www.westcoast.fisheries.noaa.gov/fisheries/management/groundfish_permits/limited_entry_permits.html. Contents of the application, and required supporting documentation, are also specified in the application form. Only complete applications will be processed.

* * * * *

(g) * * *

(1) General. For permit actions, including issuance, renewal, change in vessel registration and/or change in permit owner or vessel owner, and endorsement upgrade, the Assistant Regional Administrator for Sustainable Fisheries will make an IAD on the action. In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs regarding issuance, renewal, change in vessel registration and/or change in permit owner or vessel owner, and endorsement upgrade, will be made in writing by the

Regional Administrator acting on behalf of the Secretary of Commerce and will state the reasons therefore. This section describes the procedures for appealing the IAD on permit actions made in this title under subparts C through G of part 660. Additional information regarding appeals of an IAD related to the trawl rationalization program is contained in the specific program sections under subpart D of part 660.

* * * * *

5. In § 660.111, under the definition of “Accumulation limits”, revise paragraph (1)(ii) to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Accumulation limits * * *

(1) * * *

(ii) Vessel limits means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year, and specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit), as described at § 660.140(e)(4). Compliance with the QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

* * * * *

6. In § 660.112, add paragraphs (b)(1)(xvi) and (xvii), and revise paragraph (b)(2)(ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(b) * * *

(1) * * *

(xvi) Fail to establish a new registered vessel account in the name of the current vessel owner, following a change in ownership of a vessel, prior to fishing in the Shorebased IFQ Program with that vessel.

(xvii) Land groundfish taken and retained during an IFQ trip, from the vessel that harvested the fish, to a first receiver that does not hold a valid first receiver site license for the physical location where the IFQ landing occurred.

* * * * *

(2) * * *

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, with the following exception. Vessels with a valid Shorebased IFQ Program declaration as specified at § 660.13(d)(5)(iv)(A) making an IFQ landing, may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at §660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all catch in the landing other than the single predominant species must then be reweighed. The weight of a single predominant species is determined by deducting the weight of all other species from the total weight of the landing.

* * * * *

7. In § 660.113, revise paragraphs (c)(3) and (d)(3) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(c) * * *

(3) Annual coop report. The designated coop manager for the mothership coop must submit an annual report to NMFS and the Council by March 31 each year, before a coop permit is issued for that year. The annual coop report will contain information about the previous year's fishery, including:

(i) The mothership sector's annual allocation of Pacific whiting and the permitted mothership coop allocation;

(ii) The mothership coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(iii) A description of the method used by the mothership coop to monitor performance of coop vessels that participated in the fishery;

(iv) A description of any actions taken by the mothership coop in response to any vessels that exceed their allowed catch and bycatch; and

(v) Plans for the current year's mothership coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

* * * * *

(d) * * *

(3) Annual coop report. The designated coop manager for the C/P coop must submit an annual report to NMFS and the Council by March 31 each year, before a coop permit is issued for that year. The annual coop report will contain information about the previous year's fishery, including:

(i) The C/P sector's annual allocation of Pacific whiting;

(ii) The C/P coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(iii) A description of the method used by the C/P coop to monitor performance of cooperative vessels that participated in the fishery;

(iv) A description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch; and

(v) Plans for the current year's C/P coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

* * * * *

8. In § 660.130, revise paragraphs (d)(2)(i), (d)(2)(ii) and (d)(3)(i) to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(d) * * *

(2) * * *

(i) First receivers. Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, with the following exception. Vessels with a valid Shorebased IFQ Program declaration as specified at § 660.13(d)(5)(iv)(A) making an IFQ landing, may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at §660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all catch in the landing other than the single predominant species

must then be reweighed. The weight of a single predominant species is determined by deducting the weight of all other species from the total weight of landing.

(ii) Catcher vessels. All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those retaining all catch during a IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the state of landing.

(3) * * *

(i) Pacific whiting at-sea processing vessels may use an accurate in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all incidental catch (groundfish and non-groundfish species) must be accurately accounted for and the weight of incidental catch deducted from the total catch weight to derive the weight of a single predominant species.

* * * * *

9. In § 660.140,

- a. Revise paragraph (b)(1)(iii);
- b. Add paragraph (d)(2)(iii), revise paragraphs (d)(3)(i)(A) and (C), (d)(3)(ii)(B)(2) and (d)(3)(ii)(B)(3)(ii), remove paragraph (d)(3)(ii)(B)(3)(iii), and revise paragraph (d)(4)(iii);
- c. Revise paragraphs (e)(3)(iii)(B), (e)(4)(i), and (e)(5)(ii)(A);
- d. Revise paragraphs (f)(2)(ii), (f)(3) introductory text, (f)(3)(i) and (ii), (f)(3)(iii)(A) and (B), add paragraph (f)(3)(iii)(C)(12), and revise paragraph (f)(3)(iii)(D);

e. Revise paragraphs (f)(5) and (f)(6); and

f. Revise paragraphs (j)(2)(viii) and (j)(2)(ix)(B), to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(b) * * *

(1) * * *

(iii) All IFQ species/species group catch (landings and discards) must be covered by QP or IBQ pounds. Any deficit (negative balance in a vessel account) must be cured within 30 calendar days from the date the deficit from that trip is documented in the vessel account, unless the deficit is within the limits of the carryover provision at paragraph (e)(5) of this section, in which case the vessel account owner must declare out of the Shorebased IFQ Program, and must eliminate the deficit prior to re-entry into the fishery in the current year, or within 30 days after the issuance of QP or IBQ pounds for the following year.

* * * * *

(d) * * *

(2) * * *

(iii) QS permit application process. NMFS will accept a QS permit application from January 1 to November 30 of each calendar year. QS permit applications received between December 1 and December 31 will be processed by NMFS in the following calendar year. NMFS will issue only one QS permit to each unique person, as defined at §660.11 subject to the eligibility requirements at paragraph (d)(2)(i) of this section. Each applicant must submit a complete application. A complete application includes a QS permit application form, payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of

Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, and a complete economic data collection form if required under § 660.114. NMFS may require additional documentation as it deems necessary to make a determination on the application. The QS permit application will be considered incomplete until the required information is submitted.

(A) Initial administrative determination. For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the QS permit serves as the IAD. If disapproved, the IAD will provide the reasons for this determination. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) Effective date. The QS permit is effective on the date given on the permit and remains effective until the end of the calendar year.

(C) Appeals. If NMFS does not accept the QS permit application, the applicant may appeal the IAD consistent with the general permit appeals process defined at §660.25(g).

(3) * * *

(i) * * *

(A) QS permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in effect the following year. A complete QS permit renewal package must be received by NMFS no later than November 30 to be accepted by NMFS. A QS permit owner may submit a paper renewal package after January 1 of the following year as described in paragraph (d)(3)(i)(C) of this section.

* * * * *

(C) A complete QS permit renewal package must be received by November 30 of each calendar year. If a complete QS permit renewal package is not received by November 30, NMFS

will not renew the QS permit, the associated QS account will not be activated in the following calendar year, and QS may not be transferred. NMFS will not issue QP or IBQ pounds associated with the non-renewed QS permit for that year. Any QP or IBQ pounds derived from the QS or IBQ in the inactive QS account will be distributed to the active QS accounts in proportion to the QS or IBQ for each IFQ species given on the renewed QS permit. If a QS permit is not renewed during the October 1 through November 30 renewal period, the QS permit owner may renew after January 1 in the following year by submission of a paper renewal application, or may renew the QS permit during the next October 1 through November 30 renewal period. For renewals submitted after January 1, QPs allocated as specified at paragraph (d)(1) of this section will not be allocated to the QS account in that year. The QS permit owner will be able to transfer QS percentages from the time the QS account is activated until November 30 of that calendar year.

* * * * *

(ii) * * *

(B) * * *

(2) Transfer of QS or IBQ between QS accounts. Beginning January 1, 2014, QS permit owners may transfer QS (except for widow rockfish QS) or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. The prohibition on transferability of widow rockfish QS is extended indefinitely pending final action on reallocation of widow rockfish QS, or a NMFS determination that no such reallocation will occur, except under U.S. court order or authorization and as approved by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (i.e. , greater than or equal to 0.001%). QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP

based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

* * * * *

(3) * * *

(ii) The QS account transfer function will be reactivated by NMFS from the date that QS accounts are credited with additional QP to allow QS permit owners to transfer QP to vessel accounts only for those IFQ species with additional QP.

(4) * * *

(iii) Control. Control means, but is not limited to, the following:

(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(C) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans as described under paragraph (d)(4)(iii)(G) of this section, has the right to

direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(E) The person, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(F) The person has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(G) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and

(1) To qualify for this exception, a bank or other financial institution must be regularly or primarily engaged in the business of lending and not engaged in or controlled by entities whose primary business is the harvesting, processing, or distribution of fish or fish products.

(2) Any state or federally chartered bank or financial institution that meets the requirement of paragraph (d)(4)(iii)(G)(1) of this section does not need to submit additional information to NMFS.

(3) Any entity that is not a state or federally chartered bank or financial institution, must submit a letter requesting the exception and disclose the identity and interest share of any shareholder with a 2% or more ownership interest in the lender through submission of the Trawl Identification of Ownership Interest Form (see paragraph (d)(4)(iv) of this section). The lender must make subsequent annual submissions of the letter and Trawl Identification of Ownership Interest Form to maintain the exception. Letters requesting the exception and complete Trawl Identification of Ownership Interest Forms may be submitted to NMFS, West Coast Region, Permits Office, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only accept complete applications.

(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(B) Transfer procedures. QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer request by logging onto the online vessel account. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (e.g., USCG documentation

number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and whether the transfer complies with vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred between vessel accounts at any time during January 1 through December 31 each year unless otherwise notified by NMFS.

* * * * *

(4) * * *

(i) Vessel limits. For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP vessel limit (annual limit) in any year, and, for species covered by unused QP vessel limits (daily limit), may not have QP or IBQ pounds in excess of the unused QP vessel limit at any time. The QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account. The unused QP vessel limits (daily limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs.

* * * * *

(5) * * *

(ii) * * *

(A) The vessel account owner declares out of the Shorebased IFQ Program for the year in which the deficit occurred. The vessel account owner must submit a signed, dated, and notarized letter to OLE, declaring out of the Shorebased IFQ Program for the remainder of the year and invoking the carryover provision to cover the deficit. Signed, dated, and notarized letters may be submitted to NMFS, West Coast Region, Office of Law Enforcement, ATTN VMS, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. If the vessel account owner covers the deficit later within the same calendar year, the vessel may re-enter the Shorebased IFQ Program. If the deficit occurs less than 30 days before the end of the calendar year, exiting out of the Shorebased IFQ Program for the remainder of the year is not required.

* * * * *

(f) * * *

(2) * * *

(ii) An IFQ first receiver must have a separate first receiver site license for each unique physical location where the IFQ first receiver will receive, purchase or take custody, control, or take possession of an IFQ landing from a vessel.

* * * * *

(3) Application process. Persons interested in being licensed as an IFQ first receiver for a specific physical location must submit a complete application for a first receiver site license to NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only consider complete applications for approval. A complete application includes:

(i) State license. The license owner must provide a copy of a valid license issued by the state in which they operate that allows the person to receive fish from a catcher vessel.

(ii) Application form. A completed IFQ first receiver application form provided by NMFS, signed and dated by an authorized representative of the first receiver. To be considered complete, the form must also be notarized.

* * * * *

(iii) * * *

(A) Catch monitoring plan review process. NMFS will accept a catch monitoring plan if it includes all the required elements specified in paragraph (f)(3)(iii)(C) of this section and conforms with the actual operations and layout at the site. A site inspection is required for new first receiver site licenses. For re-registration of an existing first receiver site license, the site must be inspected at least once every three years or more frequently, as deemed necessary by NMFS, or by a NMFS designated representative. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be required of the first receiver.

(B) Arranging a site inspection. After receiving a complete application for a first receiver site license, if a site inspection is required, NMFS will contact the applicant to schedule a site inspection. A complete application for a first receiver site license must include the proposed catch monitoring plan. NMFS may request a representative of the first receiver to be at the site at the time of inspection. If the requested representative of the first receiver is not made available for the inspection, the site inspection may be postponed until the requested representative of the first receiver is made available.

(C) * * *

(12) Applicant contact. Print the name of the first receiver, physical location of the first receiver, name and phone number of the applicant, and the date of the application. The applicant must sign the catch monitoring plan.

(D) Catch monitoring plan acceptance period and changes. NMFS will accept a catch monitoring plan if it includes the required elements specified in paragraph (f)(3)(iii)(C) of this section and conforms with the actual operations and layout at the site. For the first receiver site license to remain in effect, the owner or manager must notify NMFS in writing of any and all changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

* * * * *

(5) Effective dates. The first receiver site license is valid from the effective date identified on the license until June 30, or until the state license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. A first receiver site license may not be valid for more than 365 days.

(6) Re-registration of FRSL in subsequent years. Existing first receiver site license holders must reapply annually by following the application process specified in paragraph (f)(3) of this section. If the existing license holder fails to reapply, the first receiver site license will expire as specified in paragraph (f)(5) of this section. For existing first receiver site license holders to continue to receive IFQ landings without a lapse in the effectiveness of their first receiver site license, the following re-registration deadlines apply:

(i) NMFS will mail a first receiver site license application to existing license holders on or about February 1 each year.

(ii) Applicants who want to have their new license effective for July 1 must submit their complete re-registration application to NMFS by April 15. For those first receiver site license holders who do not submit a complete re-registration application by April 15, NMFS may not be able to issue the new license by July 1 of that calendar year, and will issue the new license as soon as practicable.

* * * * *

(j) * * *

(2) * * *

(viii) Pacific whiting. For Pacific Whiting taken with midwater trawl gear, IFQ first receivers may use an in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all incidental catch (groundfish and non groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of a single predominant species.

(ix) * * *

(B) An in-line conveyor or automatic hopper scale may be used to weigh the single predominant species after catch has been sorted. Other species must be weighed in a manner that facilitates tracking of the weights of those species.

* * * * *

10. In § 660.150, revise paragraphs (c)(7)(i), (d)(1)(iii)(A)(1)(i), and (g)(2)(iv)(D) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) * * *

(7) * * *

(i) Processor obligation. Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated for each MS/CV endorsement and associated catch history assignment.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(1) * * *

(i) A list of all vessels and permit owners participating in the coop and their share of the allocated catch history assignments which must match the amount distributed to individual permit owners by NMFS.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(D) A limited entry trawl permit owner with multiple MS/CV-endorsements and associated CHA on a single permit may assign each distinct MS/CV endorsement and catch

history assignment separately to coop(s) or the non-coop fishery. In such cases, as part of the coop permit application process, specified at paragraph (d)(1)(iii) of this section, the permit owner must specify on the coop permit application form which MS/CV endorsement and associated CHA is specifically registered to a particular coop.

* * * * *

11. In § 660.213, revise paragraph (d)(2) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 or, for an individual vessel owner, when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier.

12. In § 660.216, revise paragraph (a)(1) to read as follows:

§ 660.216 Fixed gear fishery—observer requirements.

(a) * * *

(1) When NMFS notifies the vessel owner, operator, or the manager of a catcher vessel, specified at § 660.16(c), of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

* * * * *

13. In § 660.231, revise paragraph (b)(1) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) Season dates. North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual vessel owner when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

* * * * *

14. In § 660.316, revise paragraph (a)(1) to read as follows:

§ 660.316 Open access fishery—observer requirements.

(a) * * *

(1) When NMFS notifies the vessel owner, operator, or the vessel manager of a catcher vessel, specified at § 660.16(c), of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

* * * * *

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